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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
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11 LIQUAN S. GRAYSON,  
12                                      Petitioner,  
13                      v.  
14 UNKNOWN,  
15                                      Respondent.  
16

No. 2:23-CV-2861-DMC-P

ORDER

and

FINDINGS AND RECOMMENDATIONS

17                      Petitioner, a prisoner proceeding pro se, brings this petition for a writ of habeas  
18 corpus under 28 U.S.C. § 2254. On January 16, 2024, the Court dismissed Petitioner's petition  
19 and directed Petitioner to file an amended petition within 30 days. The Court also directed  
20 Petitioner to resolve the fee status for this case within 30 days. Petitioner was warned that failure  
21 to file an amended petition may result in dismissal of this action for lack of prosecution and  
22 failure to comply with court rules and orders. See Local Rule 110. To date, Petitioner has not  
23 complied.

24                      The Court must weigh five factors before imposing the harsh sanction of  
25 dismissal. See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000); Malone v.  
26 U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's  
27 interest in expeditious resolution of litigation; (2) the court's need to manage its own docket; (3)  
28 the risk of prejudice to opposing parties; (4) the public policy favoring disposition of cases on

1 their merits; and (5) the availability of less drastic sanctions. See id.; see also Ghazali v. Moran,  
2 46 F.3d 52, 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an  
3 appropriate sanction is considered a less drastic alternative sufficient to satisfy the last factor.  
4 See Malone, 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is  
5 appropriate where there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421,  
6 1423 (9th Cir. 1986). Dismissal has also been held to be an appropriate sanction for failure to  
7 comply with an order to file an amended complaint. See Ferdik v. Bonzelet, 963 F.2d 1258,  
8 1260-61 (9th Cir. 1992).

9 Having considered these factors, and in light of Petitioner's failure to file an  
10 amended petition and resolve fees as directed, the Court finds that dismissal of this action  
11 is appropriate.

12 Based on the foregoing, the undersigned orders and recommends as follows:

- 13 1. It is ORDERED that the Clerk of the Court is directed to randomly  
14 assign a District Judge.
- 15 2. It is RECOMMENDED that this action be dismissed, without prejudice,  
16 for lack of prosecution and failure to comply with court rules and orders.

17 These findings and recommendations are submitted to the United States District  
18 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days  
19 after being served with these findings and recommendations, any party may file written  
20 objections with the court. Responses to objections shall be filed within 14 days after service of  
21 objections. Failure to file objections within the specified time may waive the right to appeal.  
22 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

23  
24 Dated: March 11, 2024

  
25 DENNIS M. COTA  
26 UNITED STATES MAGISTRATE JUDGE  
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